Wan Yahyu bin Wan Abdullah & Anor v Mohamad bin Ali

HIGH COURT (KUALA TERENGGANU) — ORIGINATING MOTION NO 25–02 OF 2001

NIK HASHIM J

15 AUGUST 2001

Civil Procedure *— Appeal — Notice of — Filing of — Notice not processed and endorsed with date filed — Whether receipt by court alone could be considered filing under O 49 r 2 Subordinate Courts Rules 1980*

The appellants dissatisfied with the decision in the main action of the sessions court judge on 16 August 2000, had on 29 August 2000 sent a notice of appeal by courier service to the court which acknowledged receipt of the notice of appeal at about 11am on 30 August 2000 which was the last day for filing the notice of appeal. The sessions court registrar returned the notice of appeal to the appellants' solicitors notifying them that the notice of appeal together with its filing fee were processed and filed on 3 September 2000, as the notice of appeal could not be filed earlier as 31 August, 1–2 September 2000 were public holidays in the state of Terengganu. The registrar cited the case of *MAE Sdn Bhd & Ors v Perwira Habib Bank (M) Bhd, Kuala Terengganu* [2000] 5 MLJ 204 in support of her action. The appellants filed a motion for an order for the extension of time under O 3 r 5 of the Rules of the High Court 1980 ('the RHC') to enable the appellants to file the notice of appeal out of time. The question was whether the receipt of the notice of appeal by the court on 30 August 2000 could be considered as filing under O 49 r 2 of the Subordinate Courts Rules 1980 ('the SCR').

Held, allowing the motion:

The receipt was not synonymous with filing. The notice of appeal was considered properly filed under O 49 r 2 of the SCR only if the notice of appeal and its filing fee were in order duly accepted by the court's registry and the notice of appeal was endorsed with the date filed within 14 days from the date on which the decision was pronounced. The determining event in the instant case was the date of filing of the notice of appeal. As of 30 August 2000, when the notice of appeal and the cheque for RM100 reached the court, until they were processed and found to be in order and duly accepted by the court's registry and the notice of appeal was endorsed with the date filed, the appellants could not as yet at that stage be considered to have filed the notice of appeal in accordance with O 49 r 2 of the SCR. Thus, since the notice of appeal was processed on 3 September 2000, a date outside the 14 day time limit, the registrar was therefore right to reject it (see pp 760G, 761D–E).

[Bahasa Malaysia summary

Perayu-perayu yang tidak puas hati dengan keputusan dalam tindakan utama hakim mahkamah sesyen pada 16 Ogos 2000, telah pada 29 Ogos 2000 menghantar satu notis rayuan melalui khidmat kourier kepada mahkamah yang telah mengakusah penerimaan notis rayuan tersebut pada lebih kurang pukul 11 pagi pada 30 Ogos 2000 yang merupakan hari terakhir pemfailan notis rayuan tersebut. Pendaftar mahkamah sesyen telah mengembalikan notis rayuan tersebut kepada peguam perayu-perayu memaklumkan mereka bahawa notis rayuan bersama yuran pemfailan tersebut telah diproses dan difailkan pada 3 September 2000, kerana notis rayuan tersebut tidak dapat difailkan lebih awal sebab 31 Ogos, 1–2 September 2000 merupakan cuti umum di negeri Terengganu. Pendaftar telah memetik kes *MAE Sdn Bhd & Ors v Perwira Habib Bank Malaysia Bhd, Kuala Terengganu* [2000] 5 MLJ 204 bagi menyokong kes beliau. Perayu-perayu telah memfailkan satu usul untuk satu perintah lanjutan masa di bawah A 3 k 5 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk membolehkan perayu-perayu memfailkan notis rayuan di luar masa. Persoalannya adalah sama ada penerimaan notis rayuan oleh mahkamah pada 30 Ogos 2000 boleh dianggap sebagai pemfailan di bawah A 49 k 2 Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR').

Diputuskan, membenarkan usul tersebut:

Penerimaan tidak sinonim dengan pemfailan. Notis rayuan tersebut dianggap telah telah difailkan dengan betul di bawah A 49 k 2 KMR hanya jika notis rayuan dan pemfailannya teratur dan diterima oleh daftar mahkamah dan notis rayuan tersebut telah diindorskan dengan tarikh difailkan dalam tempoh 14 hari daripada tarikh keputusan diumumkan. Keadaan penentuan dalam kes ini adalah tarikh pemfailan notis rayuan tersebut. Setakat 30 Ogos 2000, apabila notis rayuan dan cek berjumlah RM100 tiba ke mahkamah, sehingga diproses dan didapati teratur dan diterima oleh daftar mahkamah dan notis rayuan diindorskan dengan tarikh yang difailkan, perayu-perayu tidak boleh lagi di peringkat itu dianggap telah memfailkan notis rayuan tersebut menurut A 49 k 2 KMR. Oleh itu, memandangkan notis rayuan tersebut telah diproses pada 3 September 2000, tarikh yang melebihi had masa 14 hari, pendaftar oleh itu betul untuk menolaknya (lihat ms 760G, 761D–E).]

Notes

For cases on notice of appeal, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1028–1100.

Cases referred to

MAE Sdn Bhd & Ors v Perwira Habib Bank Malaysia Bhd, Kuala Terengganu [2000] 5 MLJ 204 (refd)

Legislation referred to

Rules of the High Court 1980 O 3 r 5
Subordinate Courts Rules 1980 O 49 r 2

SE Peters (*SN Fam & Co*) for the appellants.
Rosnah Zakaria (*Rushdi Yusop & Partners*) for the respondent.

Nik Hashim J: **.** The appellants, who are the defendants in the main action brought by the respondent as plaintiff, appeal against the decision of the learned sessions court judge of 16 August 2000 holding the appellants 90% liable for the accident and awarded general damages as well as damages for loss of dependency and costs. Dissatisfied with the decision on quantum the appellants, on 29 August 2000, sent the notice of appeal by courier service to the court and the court acknowledged receipt of the notice of appeal at about 11am on 30 August 2000 which was the last day for filing the notice of appeal.

On 12 October 2000, the sessions court registrar returned the notice of appeal to the appellants' solicitors notifying them that the notice of appeal together with its filing fee were processed and filed on 3 September 2000, as the notice of appeal could not be filed earlier as 31 August, 1–2 September 2000 were public holidays in the state of Terengganu; 31 August being the National Day holiday whereas 1–2 September 2000 were Friday and the first Saturday monthly holiday for the public sector respectively. The registrar cited the case of *MAE Sdn Bhd & Ors v Perwira Habib Bank (M) Bhd, Kuala Terengganu* [2000] 5 MLJ 204 in support of her action.

Consequently, the appellants filed a motion for an order for the extension of time under O 3 r 5 of the Rules of the High Court 1980 ('the RHC') to enable the appellants to file the notice of appeal out of time. Learned counsel for the respondent had no objection to the motion. I, on 7 August 2001 allowed the notice of appeal to be filed and served within 14 days from the date of this order with costs in the cause.

However, this motion begs the question whether the receipt of the notice of appeal by the court on 30 August 2000 could be considered as filing under O 49 r 2 of the Subordinate Courts Rules 1980 ('the SCR').

In my judgment, it could not. Receipt is not synonymous with filing. The notice of appeal is considered properly filed under O 49 r 2 of the SCR only if the notice of appeal and its filing fee are in order duly accepted by the court's registry and the notice of appeal is endorsed with the date filed within 14 days from the date on which the decision was pronounced.

In *MAE Sdn Bhd*, a question arose as to whether, in the context of O 20 r 9 of the RHC, the original statement of claim was amended by the respondents on 13 or 18 April 1994. The facts were that on 3 April 1994, the court granted the respondents leave to amend their original statement of claim. The order did not specify the period within which the pleadings were to be amended, and that being so, the 14 day period under O 20 r 9 of the RHC applied with the result that the amendment must be filed not later than 17 April 1994. It was put in evidence that by letter dated 7 April 1994, the respondents sent the amended pleadings to the court together with the

necessary fee. However, the documents, although received by the registrar on 13 April 1994, were formally filed on 18 April 1994. His Lordship Abdul Kadir Sulaiman J (as he then was) ruled that:

> [la] As of 13 April 1994, when the documents and the postal order for RM20 reached the office of the registrar, they remained the proper of the respondents. This is so because until the documents are filed, the sum paid does not yet become officially accounted for. For that reason, the respondents cannot as yet at that stage be considered to have complied with the requirements of O 20 r 9 of the RHC.
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> [2] The evidence necessary to establish that the respondents has done something which is required to be done in their business with the court is the date of the filing of the relevant documents at the court's registry. This according to the evidence was done on 18 April 1994. Therefore, for the purpose of O 20 r 9 of the RHC, the respondents must be taken to have amended their pleading only on 18 April 1994, which is clearly outside the requirement of the said order which renders the amendment ineffective.

With respect, I agree with the ruling of the learned judge.

The determining event in the instant case is the date of filing of the notice of appeal. As of 30 August 2000, when the notice of appeal and the cheque for RM100 reached the court, until they are processed and found to be in order and duly accepted by the court's registry and the notice of appeal is endorsed with the date filed, the appellants cannot as yet at that stage be considered to have filed the notice of appeal in accordance with O 49 r 2 of the SCR. Thus, since the notice of appeal was processed on 3 September 2000, a date outside the 14 day time limit, the registrar was therefore right to reject it.

In the event, I allowed the motion accordingly.

Motion allowed.

Reported by Ezatul Zuria Azhari